

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23305
O/nl

_____AD3d_____

Argued - April 21, 2009

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-03565

DECISION & ORDER

Olga Rosello, et al., respondents, v City of New York,
et al., defendants, Keyspan Energy N.Y.C., et al.,
appellants.

(Index No. 1555/03)

Cullen & Dykman, LLP, Brooklyn, N.Y. (Joseph Delfino of counsel), for appellant
Keyspan Energy N.Y.C.

Lawrence Rogak, LLP, Oceanside, N.Y. (Renee Breitner of counsel), for appellant
Gaetano Fontana.

Friedman, Levy & Goldfarb, LLP, New York, N.Y. (Ira H. Goldfarb and David J.
Kresman of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendants Keyspan
Energy N.Y.C. and Gaetano Fontana separately appeal from an order of the Supreme Court, Kings
County (Rothenberg, J.), dated March 7, 2008, which denied their respective motions for summary
judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is reversed, on the law, with one bill of costs, and the
motions for summary judgment dismissing the complaint insofar as asserted against the appellants are
granted.

May 26, 2009

ROSELLO v CITY OF NEW YORK

Page 1.

On January 4, 2002, at approximately 8:50 A.M., the plaintiff Olga Rosello (hereinafter the plaintiff) tripped and fell over a gas valve cap on the sidewalk of Fort Hamilton Parkway in Brooklyn, sustaining personal injuries. After the plaintiff and her husband, derivatively, commenced the present action, the defendant Keyspan Energy N.Y.C. (hereinafter Keyspan) moved for summary judgment dismissing the complaint insofar as asserted against it, and the defendant Gaetano Fontano, the co-owner of an adjacent premises, moved for the same relief. The Supreme Court denied the motions. We reverse.

The appellants established their prima facie entitlement to judgment as a matter of law by showing that the alleged defect in the sidewalk was trivial, nonactionable, and did not possess the characteristics of a trap or nuisance (*see Trincere v County of Suffolk*, 90 NY2d 976; *Shiles v Carillon Nursing & Rehabilitation Ctr., LLC*, 54 AD3d 746). The photographs of the sidewalk which Keyspan submitted in support of its motion indicate that the elevation differential between the defect and the surrounding sidewalk was slight (*see Hawkins v Carter Community Hous. Dev. Fund Corp.*, 40 AD3d 812). In addition, considering the depth of the defect and its width, as well as the time, place, and circumstances of the injury, the alleged defect did not have the characteristics of a trap or snare (*see Trincere v County of Suffolk*, 90 NY2d at 976). In opposition, the plaintiffs failed to raise a triable issue of fact (*see CPLR 3212[b]*).

MASTRO, J.P., SKELOS, DICKERSON and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court